Sections 1—3.

ACT XXI OF 1866.

Notification by the Government of India, Foreign Department, Judicial No. 58 I.J., dated Fort William, the 14th February 1881.

The Viceroy and Governor-General in Council is pleased to extend Act XXI of 1866 (The Native Converts' Marriage Dissolution Act) to the Province of Mysore.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 2ND APRIL 1866.)

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

Preamble.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; It is enacted as follows:—

Short title.

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866".

2. [*Commencement of Act.*] *Repealed by Act XVI of 1874.*

Interpretation clause.

3. In this Act:—

"Native husband".

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

"Native wife."

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

"Native law."

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:

"Month and "year."

"Month" and "year" shall respectively mean month and year according to the British calendar:

"High Court."

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends:

Number.

And unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Sections 4—11.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society. When convert deserted by his wife may sue for conjugal society.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society. When convert deserted by her husband may sue.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court: otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit. Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow. Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition [a] may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge. On service of petition, citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow. Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent, and the provisions of the Code of Civil Procedure as the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act. Service of citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her Penalty on respondent not obeying citation.

(a) Certain words regarding Court-fee, which were repealed by Act VII of 1870, have been omitted.

or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.

Points to be proved on appearance of petitioner.

12. On the day fixed in the citation, the petitioner shall appear in Court, and the following points shall be proved—

(1) The identity of the parties:

(2) The marriage between the petitioner and the respondent:

(3) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4) The desertion or repudiation of the petitioner by the respondent:

(5) That such desertion of repudiation was in consequence of the petitioner's change of religion:

(6) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge; but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as thereinafter mentioned.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall

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make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment, the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner; and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on the ground of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner,

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Liberty to parties to marry again.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge to order commission to issue for examination of exempted persons.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied

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by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the ground mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Petitioner's cruelty or adultery to bar suit.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

26. If the petitioner, being a male has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or rights of children.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself

suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents, and suit to be stayed.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

High Court may refer case to Judge for addition or alterations.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

Sections 33—35.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the ground on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

High Court may decide question raised, and Judge shall dispose of case accordingly.

34. Nothing contained in this Act [a] * * * shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church. * * * * * [b]

Saving of Roman Catholic marriages.

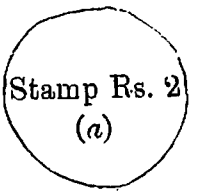
35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statutes 21 and 22 Vic., cap. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca. * * * [c]

Extent of Act.

THE FIRST SCHEDULE.

(*See Section* 7.)

Form of Petition.



To the Judge of the Civil Court of

The day of 18

The petition of *A.B.* of

Sheweth:—

1. That your petitioner was born on or about the day of 18

2. That your petitioner was on the day of in the year 18 lawfully married to *C.D.* at

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[a], [b] and [c] Certain words repealed by Act XVI of 1874 before the present Act was extended to Mysore have been omitted.

[*a*] But see Act VII of 1870), Schedule II No. 14, according to which the fee payable is *five* rupees.

3. That the said *C.D.* is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 ,

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of

6. That on the day of 18 [*at least six months prior to the date of petition,*] the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved. *A.B.*

Form of verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

(*See Section* 9).

Form of Citation in ordinary cases.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: Now this is to command you that, at the expiration of

days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by *G.H.* on the within named *C.D.* of at on the day of 18 (Signed) *G.H.*

THE THIRD SCHEDULE

(See Section 9.)

Form of Citation in Case of Respondent exempt from Appearance in Court.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved. Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorised in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,
Judge of the Civil Court of

Indorsement to be made after service.

The citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(Signed) *G. H.*